

The Honorable Benjamin H. Settle

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

STATE OF WASHINGTON,

Plaintiff,

v.

FRANCISCAN HEALTH SYSTEM d/b/a
CHI FRANCISCAN HEALTH;
FRANCISCAN MEDICAL GROUP; THE
DOCTORS CLINIC, a Professional
Corporation; and WESTSOUND
ORTHOPAEDICS, P.S.,

Defendants.

NO. 3:17-cv-05690-BHS

**DEFENDANTS' MOTION TO FILE
UNDER SEAL THEIR PROPOSED
FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

**NOTE ON MOTION CALENDAR:
March 8, 2019**

Defendants Franciscan Health System, Franciscan Medical Group, The Doctors Clinic, and Westsound Orthopaedics, P.S. ("Defendants") move the Court pursuant to Federal Rule of Civil Procedure 5.2(d) and LCR 5(g) for an order directing that unredacted versions of the Findings of Fact and Conclusions of Law (**and any exhibits**) remain under seal.¹

II. BACKGROUND

The parties to this case entered into a Stipulated Protective Order, which the Court

¹ Pursuant to LCR 10(e)(9), courtesy copies of this motion and attachments will be delivered to the Clerk's Office.

1 entered on October 26, 2017 (Dkt. No. 30), which was later amended. In Defendants' Proposed
 2 Findings of Fact and Conclusions of Law filed today, Defendants rely upon documents that have
 3 been designated as confidential by Defendants, or third parties.

4 **III. LEGAL STANDARD**

5 Under this Court's Local Rules, a party may file a document under seal "if the party files
 6 a motion or stipulated motion to seal the document before or at the same time the party files the
 7 sealed document." LCR 5(g)(2)(B). When a party cannot avoid including confidential
 8 information in a filing, the party must file a version that redacts the confidential information, and
 9 a separate unredacted version accompanied by a motion to seal. LCR 5(g)(5).

10 Under LCR 5(g)(1)(A), if a party seeks to file a document "under seal because another
 11 party has designated it as confidential during discovery, the filing party and the designating party
 12 must meet and confer to determine whether the designating party will withdraw the confidential
 13 designations or will agree to redact the document so that sealing is unnecessary." LCR
 14 5(g)(1)(A). Where parties have entered a stipulated protective order, the party wishing to file a
 15 confidential document it obtained from another party in discovery may file a motion to seal but
 16 need not satisfy LCR 5(g)(3)(B), which requires an explanation of "i. the legitimate private or
 17 public interest that warrant the relief sought; ii. The injury that will result if the relief sought is
 18 not granted; and iii. Why a less restrictive alternative to the relief sought is not sufficient."

19 Defendants hereby certify that the majority of the information redacted in the Findings of
 20 Fact and Conclusions of Law has been designated as confidential by third parties pursuant to the
 21 Protective Order (Dkt. No. 30). Defendants have been in communication with third parties and
 22 have attempted to de-designate as much information as possible. However, the information that
 23 remains redacted is competitively sensitive information about strategy, provider networks, and
 24 reimbursement rates. The release of this information would be damaging to the third parties.

25 Defendants have filed on the public docket a version of the Findings of Fact and
 26 Conclusions of Law that does not reveal material that parties have designated confidential. Filing

a redacted version of the Findings of Fact and Conclusions of Law is a less restrictive alternative to withholding the entirety of the documents from the public docket.

IV. REQUESTED RELIEF

In accordance with these legal standards, Defendants request that the Court enter an order pursuant to Fed. R. Civ. P. 5.2(d) and LCR 5(g)(7) directing that the unredacted versions of the Findings of Fact and Conclusions of Law remain under seal until further ordered.

Respectfully submitted,

/s/ Jessica M. Andrade

Jessica M. Andrade, WSBA No. 39297
Polsinelli PC
1000 Second Avenue, Suite 3500
Seattle, WA 98104
Telephone: (206) 393-5422
jessica.andrade@polsinelli.com

Respectfully submitted,

/s/ Douglas C. Ross (with consent)

Douglas C. Ross, WSBA No. 12811
David A. Maas, WSBA No. 50694
Davis Wright Tremaine LLP
920 Fifth Avenue, Suite 3300
Seattle, WA 98104-1610
douglasross@dwt.com
davidmaas@dwt.com

Mitchell D. Raup, DC Bar No. 459372
(*pro hac vice*)
Herbert F. Allen, DC Bar No. 1002364
(*pro hac vice*)
Polsinelli PC
1401 I Street NW, Suite 800
Washington, D.C. 20005
Telephone: (202) 783-3300
mraup@polsinelli.com
hallen@polsinelli.com

Douglas E. Litvack, DC Bar No. 1024973
(*pro hac vice*)
Davis Wright Tremaine LLP
1919 Pennsylvania Avenue, N.W., Suite 800
Washington, D.C. 20006-3401
Tel: 202.973.4200 Fax: 202.973.4499
dougslitvack@dwt.com

Attorneys for Defendant The Doctors Clinic

Matthew C. Hans, MO Bar No. 51541
(*pro hac vice*)
Polsinelli PC
100 South Fourth Street, Suite 1000
St. Louis, MO 63102
Telephone: (314) 889-8000
mhans@polsinelli.com

G. Gabriel Zorogastua, MO Bar No. 59643
(*pro hac vice*)
Polsinelli PC

1 900 W. 48th Place, Suite 900
2 Kansas City, MO 64112
3 Telephone: (816)753-1000
4 gzorogastua@polsinelli.com

5 *Attorneys for Defendants Franciscan*
6 *Health System d/b/a Chi Franciscan Health,*
7 *Franciscan Medical Group, and WestSound*
8 *Orthopaedics, P.S.*
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CERTIFICATE OF SERVICE

I hereby certify that on February 27, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following attorneys:

Counsel for Plaintiff State of Washington:

- Erica A. Koscher — ericak@atg.wa.gov
- Amy Nicole Linscheid Hanson — amyh3@atg.wa.gov
- Neal Harold Luna — neall@atg.wa.gov
- Eric S. Newman — ericn@atg.wa.gov
- [Justin P. Wade](mailto:justinw@atg.wa.gov) — justinw@atg.wa.gov
- Luminita Nodit — luminitan@atg.wa.gov
- Neal Harold Luna — neall@atg.wa.gov
- Rahul Rao — rahulr@atg.wa.gov
- Rene David Tomisser — renet@atg.wa.gov
- Travis Alex Kennedy — travisk@atg.wa.gov

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 27th day of February, 2019, at Seattle, Washington.

/s/ Jessica M. Andrade
Jessica M. Andrade